LIBRARY
SUPREME COURT, U. S.

No. 735

Office-Supreme Court, U.S.
FILED
OCT 31 1966
JOHN F. DAVIS, CLERK

No. 5100

IN THE

Supreme Court of the United States

EPIFONIO GARCIA, *et als.*,
Appellants,

vs.

BALBINO MORALES,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

JURISDICTIONAL STATEMENT.

MEREDITH & MEREDITH,
Attorneys for Appellants,
11 W. State St.,
Trenton, New Jersey.

EDWARD B. MEREDITH,
Of Counsel.

MacCrellish & Quigley Co., Printers, Trenton, New Jersey

INDEX.

	PAGE
Jurisdictional Statement	1
Opinion Below	1
Jurisdiction	2
Question Presented	3
Statutes Involved	3
Statement	4
The Questions Presented are Substantial	7
ARGUMENT:	
1. The continuing enactment of similar legislation by sister states suggests the need for prompt judicial definition	8
2. The decision below is directly at variance with comparable decision of courts of last resort	10
3. New Jersey Revised Statutes 39:6–69(b) is unconstitutional on its face	11
a. Denial of due process for lack of reasonableness	11
b. Denial of due process by reason of deficient classification	12
c. Denial of equal protection	12
d. Taking of property without just compensation	12
Conclusion	13

CITATIONS.

PAGE

Collins v. *State Board of Social Welfare*, 248 Iowa 369, 81 NW 2d 4 (1957) 10, 12

Corrigan v. *Gassert*, 27 N. J. 227, 142 A2d 209 (S. Ct. 1958) 7

Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282, 66 L. Ed. 239, 42 S. Ct. 106 (1921) 2

Garcia, et al. v. *Morales*, 47 N. J. 269, 220 A2d 198 (S. Ct. 1966) 1

Hopkins v. *White*, 5 D. L. R. 679 (Ontario H. C.) 9

In Re Carroll v. *Furlong*, 3 D. L. R. 279 (Newfoundland St. Ct. 1955) 8, 9

Kesler v. *Department of Public Safety*, 369 U. S. 153, 7 L. Ed. 2d 641, 82 S. Ct. 807 (1962) 9

King, et al. v. *Wyman*, 20 D. L. R. 2d 561 (N. B. S. Ct. 1959) 9

Klebanoff v. *Price*, 2 D. L. R. 575 (Ontario Ct. of App. 1949) 9

Largent v. *Texas*, 318 U. S. 418, 87 L. Ed. 873, 63 S. Ct. 667 (1943) 2, 7

Lathrop v. *Donohue*, 367 U. S. 820, GL. Ed. 2nd 1191 81 S. Ct. 1826 (1961) 2

Lawrence v. *State Tax Commission*, 286 U. S. 276, 282-3; 76 L. Ed. 1102, 1107; 52 S. Ct. 556, 558 (1932) 7

Rudnick v. *Bentler*, 66 N. J. Super. 224, 168 A. 2d 813 (App. Div. 1961) 7

Smith v. *Cahoon*, 283 U. S. 553, 75 L. Ed. 12 64, 51 S. Ct. 582 (S. Ct. 1931) 2, 10

United Towns Electric Co. Ltd. v. *Bishop*, 5 D. L. R. 782 (Newfoundland S. Ct. 1955) 9

Williams v. *Bruffy*, 96 U. S. 176, 24 L. Ed. 716 (1877) 2

STATUTES.

	PAGE
Annotated Code of Maryland, Art. 66½, § 162 (1963)	9
Constitution of the United States, Amendment XIV	5
Michigan Statutes Annotated, § 9.2801-9.2831 (1965)	9
New Jersey Constitution, Article I, Para. 1 and 5	5
New Jersey Revised Statutes—39:6–69	2
New Jersey Revised Statutes—39:6–73	3
New Jersey Revised Statutes—39:6–84	3
North Dakota Century Code Annotated, 39–17–07 (1963)	9
United States Code, Volume 28, § 1257(2)	2

MISCELLANEOUS.

"A Look at the Various Uninsured Motorist Statutes," 15 *Western Reserve Law Review* 386, 387	9
Appleman Insurance Law and Practice, Vol. 7, § 4255, p. 17	11

APPENDIX.

APPENDIX A

New Jersey Revised Statutes 39:6–69	1a
New Jersey Revised Statutes 39:6–73	2a
New Jersey Revised Statutes 39:8–84	2a, 3a

APPENDIX B

(1) Superior Court of New Jersey, Written Order	3a
(2) Supreme Court of New Jersey, Opinion	4a, 5a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 5100

EPIFONIO GARCIA, *et als.*,

Appellants,

vs.

BALBINO MORALES,

Appellee.

On Appeal from the Supreme Court of the State of New Jersey.

JURISDICTIONAL STATEMENT.

Appellants appeal from the Judgment of the Supreme Court of the State of New Jersey entered June 6, 1966, Petition for Rehearing having been denied July 1, 1966, which Judgment affirmed a final Order of the Law (Trial) Division of the Superior Court of New Jersey and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question, meriting review, is presented.

OPINION BELOW.

The Opinion of the Supreme Court of New Jersey is reported in 47 N. J. 269, 220 A2d 198 (1966). No opinion was rendered by the trial court. The written Order, entered following oral denial of Appellant's motion, is attached hereto as Appendix B(1). The Opinion of the Supreme Court is annexed as Appendix B(2).

JURISDICTION.

An action in tort was brought against the uninsured motorist appellee, service having been made upon, and a defense having been undertaken by the New Jersey Unsatisfied Claim and Judgment Fund. Judgments were entered in favor of the four plaintiff-appellees in amounts totalling $85,000.00.

Pursuant to *New Jersey Revised Statutes* 39:6–69, motion was thereafter made to compel payment of the Judgments, subject to the $10,000 per capita limitation set forth in R. S. 39:6–69(a). An Order was entered by the Law Division of the Superior Court of New Jersey authorizing payment on a pro rata basis but limiting the aggregate payments to $20,000. An accordant Order was entered on July 1, 1965.

Appeal was taken by the Appellants to the Appellate Division of the Superior Court of New Jersey and, pending argument, was certified directly by the Supreme Court of New Jersey. The Judgment of the Supreme Court of New Jersey was entered June 6, 1966 and Petition for Rehearing, upon timely application, was denied July 1, 1966. A Notice of Appeal was filed in that Court on September 1, 1966.

The jurisdiction of the Supreme Court to review this decision is conferred by *Title 28, United States Code,* Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Williams* v. *Bruffy,* 96 U. S. 176, 24 L. Ed. 716 (1877); *Lathrop* v. *Donohue,* 367 U. S. 820, L. Ed. 2nd 1191, 81 S. Ct. 1826 (1961); *Largent* v. *Texas,* 318 U. S. 418, 87 L. Ed. 873, 63 S. Ct. 667 (1943); *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 66 L. Ed. 239, 42 S. Ct. 106 (1921); and see particularly *Smith* v. *Cahoon,* 283 U. S. 553, 75 L. Ed. 1264, 51 S. Ct. 582 (1931).

QUESTION PRESENTED.

Where the State of New Jersey has created an Unsatisfied Claim and Judgment Fund for the benefit of innocent victims of uninsured motorists, which fund contains a limitation of $10,000.00 for any one person injured in any one accident, may the State constitutionally impose an additional aggregate limitation of $20,000.00 per accident, irrespective of the number of persons injured or the nature of their injuries?

STATUTES INVOLVED.

Revised Statutes of New Jersey, 39:6–69(b), 73, 84. R. S. 39:6–73, 84 are directly corollary provisions of R. S. 39:6–69 which, in its pertinent parts, provides:

> "When any person recovers a valid judgment . . . in this State, against . . . the operator . . . of a motor vehicle, for injury . . . and any amount remains unpaid thereon . . . such judgment creditor may . . . file a verified claim in the court in which judgment was entered and . . . apply for an Order directing payment out of the fund, if the amount unpaid upon such judgment . . . which . . . does not exceed
>
> (a) The maximum amount or limit of $10,000.00 . . . on account of injury to . . . 1 person in any one accident, and
>
> (b) The maximum amount or limit, subject to such limit for any 1 person so injured . . . of $20,000.00 . . . on account of injury to . . . more than 1 person, in any one accident".

(See Appendix A for Texts of Statutes.)

STATEMENT.

The Defendant, Morales, an uninsured New Jersey motorist, was the owner and operator of motor vehicle which was involved in a one car collision on February 22, 1964 in the State of New Jersey.

The Plaintiffs, Garcia, Ruiz, M. Morales and Pagan were passengers in the Morales vehicle and severally suffered severe trauma. Garcia and M. Morales were rendered unemployable by their injuries. Ruiz' primary injury was a dislocated hip. Pagan sustained scars and complete loss of vision in one eye.

A negligence complaint was filed and served upon both the Defendant, Morales and the Unsatisfied Claim and Judgment Fund Board. Following the introduction of proofs, final judgments were rendered against the Defendant Morales in the following amounts:

Garcia	$30,000.00
Ruiz	8,500.00
M. Morales	30,000.00
Pagan	16,500.00

No appeal was taken from the Judgment and it was ascertained that the same was uncollectible.

Thereafter, on motion and summary hearing, the Plaintiffs, upon a showing of statutory qualifications and entitlement (R. S. 39:6–62, 65, 70—not here at issue) sought the entry of an Order requiring payment out of the Unsatisfied Claim and Judgment Fund of the following sums to the named plaintiffs:

Garcia	$10,000.00
Ruiz	8,500.00
M. Morales	10,000.00
Pagan	10,000.00

In a Memorandum accompanying the Notice of Motion, Plaintiffs' first opportunity to plead in the trial court, the

federal questions herein presented were raised in the following manner:

> "The plaintiffs essentially sought the entry of an Order directing the individual payments noted immediately above, without regard to the limitations imposed by R. S. 39:6–73 (c) (2), or those expressed in R. S. 39:6–69 (b), on the ground that the limitations were prohibited by paragraphs 1 and 5 of Article I. of the New Jersey Constitution, 1947, and Amendment XIV, specifically:
>
> (1) The limitations constituted a denial of equal protection of the law to the plaintiffs.
> (2) The limitations are arbitrary, capricious and unreasonable and thus work a denial of due process.
> (3) The limitations imposed bear no real or substantial relationship to the objects sought to be obtained by the legislation and, hence, effect a denial of due process.
> (4) The classification inherent in the limitations is arbitrary and discriminatory and thus in derogation of the equal protection and due process sections cited". Appendix for Appellant (9a-29 to 10a-12).

In denying Plaintiffs' motion, the trial court ruled only inferentially on the questions raised.

An Order thereafter issued directing the Treasurer to pay "to . . . (the named Plaintiffs and their attorneys) . . . the sum of . . . $20,000.00 . . . representing the maximum amount or limit recoverable from the Fund, on account of injury to more than 1 person in any 1 accident". (Appendix for Appellant, 7a-6).

The following sums, inclusive of attorney's fees, were subsequently disbursed by the Treasurer to each named Plaintiff:

Garcia	$7,058.00
Ruiz	2,000.00
M. Morales	7,058.00
Pagan	3,882.40

This was intended to represent a pro rata distribution of the $20,000.00 provided by the Order and, by agreement, was made and accepted without prejudice to the rights of any party upon appeal.

Upon appeal to the Appellate Division, and upon Certification by the Supreme Court, the federal questions raised herein were presented in the Statement of Questions Involved (Plaintiffs' first appellate opportunity) in the following manner:

> "1. Are R. S. 39:6–69(b) and corollary $20,000.00 limitations of the Unsatisfied Claim and Judgment Fund Law unconstitutional by reason of their contravention of the equal protection and due process guaranties of the U. S. Constitution, Amendments V and XIV?
>
> 2. Are the inchoate rights of claimants under the Fund Law substantive rights within the protection of the United States Constitution, Amendment I and the New Jersey Constitution, 1947, Art. 1, para. 1?
>
> 3. Are such limitations unconstitutional as effecting a taking of property without compensation in violation of the provisions of the United States Constitution, Amendments V and XIV and the New Jersey Constitution, Art. 1, para. 20?
>
> 4. Do such limitations bear any reasonable relationship to the purpose of the legislation?
>
> 5. In the application of the Fund Law, remedial social legislation, does the word "accident" refer to accidental cause or accidental results?"

At oral argument, invitation was extended to submit such supplementary data as might aid the Court. Insurance data pertinent to private policies and risk or premium factors common in 5/10, 10/20, 20/40 and similarly limited private policies was submitted by the Appellants.

It was the essential holding of the Court, that the Plaintiffs were without standing to challenge the validity of the cited sections since they would gain nothing thereby and "we would be increasing the monetary liability of the Fund far beyond the limit intended by the Legislature".

See *Largent* v. *Texas, supra; Lawrence* v. *State Tax Commission,* 286 U. S. 276, 282-3; 76 L. Ed. 1102, 1107; 52 S. Ct. 556, 558 (1942).

The Petition for Rehearing was denied without opinion.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The New Jersey Unsatisfied Claim and Judgment Law has, as its

> ". . . primary object . . . to provide a measure of relief for persons who sustain losses or injury inflicted by financially irresponsible or unidentified owners or operators of motor vehicles where such persons would otherwise be remediless". *Corrigan* v. *Gassert,* 27 N. J. 227, 142 A. 2d 209 (S. Ct. 1958).

Its financing and its operation clearly constitute "state action". The rights accruing to injured persons have been held to be "substantive right(s)". *Rudnick* v. *Bentler,* 66 N. J. Super. 224, 168 A. 2d 813 (App. Div. 1961).

This "state action" is limited by and these "substantive rights" are protected by the provisions of XIVth Amendment. It is manifest that the Legislature, in enacting the New Jersey Fund Law, literally lifted the familiar limiting provisions appearing in most private automobile liability policies, i. e., 5/10, 10/20, 20/40, etc., and inserted them in the legislation. The simple and important question which

arises in this case is whether or not, where state action is involved, the second or aggregate limitation is constitutionally repugnant. The import of this question is heightened when it is realized that an aggregate limitation achieves no single socially desirable goal.

A single example will illume the discriminatory and absurd results which inevitably flow from the aggregate limitation, albeit it is a familiar aspect of private insurance policies. Assume three infants on a sidewalk, each holding the other, are struck by a taxi which then regains the roadway and courses several hundred feet. It again leaves the roadway and strikes five pedestrians, having no common purpose, waiting to cross an intersection. Thereafter it strikes a pole, injuring two passengers. The cab is uninsured. All injured persons secure judgments in the amount of $10,000.00 each. If viewed as three separate accidents (see *In Re Carroll* v. *Furlong* (1955), 3 D. L. R. 279 (Newfoundland St. Ct.)), the infants, under the New Jersey Law, would receive $6,667.00 each; the pedestrians $4,000.00 each; the passengers $10,000.00 each. If the geographic proximity of the latter mishaps was held to constitute a single accident, the infants' recovery would remain the same, but passengers and pedestrians would each recover $2,859.00. Endless variations, each more absurd than the other, would serve further to point up the unreasonableness and arbitrary nature of the limitation.

Plenary hearing is respectfully requested on the constitutionality of such a statute for three primary reasons.

1.

The Continuing Enactment of Similar Legislation by Sister States Suggests the Need for Prompt Judicial Definition.

The concept of an Unsatisfied Claim and Judgment Fund Law appears to have originated in the Canadian Provinces. These statutes uniformly provide for both an individual and an aggregate limit on recovery. While cases factually similar to the case at bar have there arisen, no parallel con-

stitutional issues were presented. The reason would appear to be that the Dominion had no Bill of Rights until the recent enactment of the *Canadian Bill of Rights,* 8-9 Elizabeth II, Chap. 44. See particularly Part I, Para. I, Sec. a and b as to "due process, and equality before the law and the protection of the law".

The reported Canadian cases antedate the enactment of the Canadian Bill of Rights. Thus, in the absence of a supervening constitutional-type compact, the statutes have been followed literally, albeit with stated judicial reluctance and, in some cases, imagination productive of more just results. See *Klebanoff* v. *Price* (1949), 2 D. L. R. 575 (Ontario Ct. of App.); *Hopkins* v. *White* (1950), 4 D. L. R. 679 (Ontario H. C.); *King, et al.* v. *Wyman* (1959), 20 D. L. R. 2d 561 (NB S. Ct.); *In Re Carroll* v. *Furlong, supra; United Towns Electric Co. Ltd.* v. *Bishop* (1955), 5 D. L. R. 782 (Newfoundland S. Ct.).

In the United States, at the time of the hearing below, in addition to New Jersey, North Dakota and Maryland had enacted similar legislation, both with aggregate limits. "The Uninsured Motorist: A Look at the Various Uninsured Motorist Statutes," 15 *Western Reserve Law Review,* 386, 387; *North Dakota Century Code Annotated,* 39-17-07 (1963); *Annotated Code of Maryland,* Art. 66½ § 162 (1964). Since that time, similar legislation was enacted in *Michigan Statutes Annotated,* Section 9.2801-9.2831 (1965).

A related aspect of the general problem was treated and an extensive compilation of statutory references appears in *Kesler* v. *Department of Public Safety,* 369 U. S. 153, 7 L. Ed. 2d 641 82 S. Ct. 807 (1962).

The growth of such Funds, all with similar provisions born of private insurance policies and the Ontario prototype, suggests the need for judicial definition to avoid the multiple future repetition of inequities such as are here presented.

2.

The Decision Below Is Directly at Variance With Comparable Decisions of Courts of Last Resort.

As noted, this is the first case arising on the validity of an aggregate limitation where state action is concerned. However, two cases, directly contrary to the result below, are in point.

In *Smith* v. *Cahoon, supra,* this Court struck down an arbitrary classification in a comparable Florida statute which sought to insulate from the onus of compulsory insurance certain agricultural and seafood commercial shippers. A fortiori, just as it was not possible to justify a different treatment of the public when struck by a coffee-carrying truck as opposed to a shrimp-carrying vehicle, so also is impossible constitutionally to justify a differentiation between members of the public singly injured or injured in multiples.

Directly in point is the decision of the Supreme Court of Iowa in *Collins* v. *State Board of Social Welfare,* 248 Iowa 369, 81 NW 2d 4 (1957). There, the Legislature undertook to limit grants of aid to dependent children where several children might be living in the homes of enumerated relatives, as contrasted with dependent children not so housed.

> "The Amendment on its face appears to be, and was, we think, intended as an economy measure. In effect, it is a sub-classification of the original classification, i. e., dependent children, based solely upon the number of children in the home, with no consideration as to need, a circumstance completely disconnected with the basic classification and the purpose and reason therefore . . . We think the amendment is clearly discriminatory between dependent children as defined in Section 239.1(4) and is purely arbitrary and unreasonable in view of the announced purpose of the Act".

3.

New Jersey Revised Statutes 39:6-69(b) Is Unconstitutional on Its Face.

The aggregate limits appearing in private insurance policies are presumably designed to protect other policyholders against company insolvency in the event of catastrophe loss. They are also compelled by a rather standard statutory provision in most state insurance laws which limits exposure on any one risk to a percentage of net assets. In New Jersey, the limitation, for example, is 10%. *New Jersey Revised Statutes,* 17:18–9. As a general rule however,

> "Liability insurers have the same rights as individuals to limit their liability and to impose whatever conditions they please on their obligations, provided they are not in contravention of statutory inhibitions or public policy. *Appleman Insurance Law and Practice,* Vol. 7, § 4255, p. 17.

A state legislature, on the other hand, is not free to enter into such engagement as it may choose. By seeking to limit the liability of the Unsatisfied Claim and Judgment Fund on an aggregate basis, in the same manner as private insurers, the State Fund operates, whenever three or more persons are injured in a way barred by familiar constitutional concepts.

a.

Denial of Due Process for Lack of Reasonableness.

While the Fund exists for the sole purpose of protecting the innocent victims of uninsured motorists, the aggregate limitation bears no reasonable relationship, indeed no relationship to this end. While affording full "coverage" to 1 or 2 persons injured in a single accident, it effects reduced "coverage" to individuals in only the most serious accidents where the needs of the victims and the needs of the

community are the greatest. The suggestion of the Court below that the aggregate limitation operates to limit the exposure of the Fund or facilitate its solvency is not a defensible goal. This is but another way of saying that only those involved in multi-injury accidents, must forego standard benefits in order to protect persons not yet in the beneficiary class or, persons identically situate who happen to have been injured singly.

b.

Denial of Due Process by Reason of Deficient Classification.

The classification, upon which entitlement to maximum benefit rests, is 1 or 2 persons injured vs. 3 or more persons injured. Within the latter class, persons are benefited in inverse ratio to the number involved. Both classes arise, not by reason of any rational choice, but merely because of the pure chance that a given collision injures many, rather than few, or the reverse. Such is the "classification" imposed by an aggregate limit.

c.

Denial of Equal Protection.

The Fund law creates no "standard benefit" for injured victims of uninsured motorists as a class, but rather treats unequally of those within this class even though there be identity of injury and identity of damage. This situation is more offensive than that discussed in *Collins* v. *State Board of Welfare, supra,* where there was at least a familial relationship, not present here.

d.

Taking of Property Without Just Compensation.

In the instant case, and indeed, in any serious multi-injury case, the limitations of R. S. 39:6–69(b) require a race for the funds, or a pro-ration as was done here. In

the former event, one sees a most startling denial of equal protection, dependent almost solely upon court calendars or other extraneous factors having utterly no relationship to the ends of the statute. In the latter event, the monies available to A, are decreased solely to make funds available to B, C and D, persons wholly foreign to A, or to A's circumstances. In short, his substantive interest in, or inchoate right to, property is taken, *pro tanto*, in order to enable a governmental use of such funds, viz., benefiting B, C and D. Obviously, the taking is without compensation, just or otherwise.

CONCLUSION.

It is submitted that the use of aggregate limits of liability are invalid and constitutionally repugnant when employed in "state action". No similar case, directly ruling on this question, appears to have been decided by this Court. The growing use of the aggregate principle in state legislation affecting the rights of great numbers of automobile accident victims suggests the need for present decision. The questions presented by this appeal are substantial and of public importance.

Respectfully submitted,

EDWARD B. MEREDITH.

APPENDIX A.

39:6–69. Application for payment of judgment

When any qualified person recovers a valid judgment in any court of competent jurisdiction in this State, against any other person, who was the operator or owner of a motor vehicle, for injury to, or death of, any person or persons, or a similar valid judgment in such court against such a defendant for an amount in excess of $100.00, exclusive of interest and costs, for damages to property, except property of others in charge of such operator or owner or such operator's or owner's employees, arising out of the ownership, maintenance or use of the motor vehicle in this State on or after April 1, 1955, and any amount remains unpaid thereon in the case of a judgment for bodily injury or death, or any amount in excess of $100.00 remains unpaid thereon in case of a judgment for damage to property, such judgment creditor may, upon the termination of all proceedings, including reviews and appeals in connection with such judgment, file a verified claim in the court in which the judgment was entered and, upon 10 days' written notice to the board may apply to the court for an order directing payment out of the fund, of the amount unpaid upon such judgment for bodily injury or death, which does not exceed, or upon such judgment for damage to property which exceeds the sum of $100.00 and does not exceed—

(a) The maximum amount or limit of $10,000.00, exclusive of interest and costs, on account of injury to, or death of, 1 person, in any 1 accident, and

(b) The maximum amount or limit, subject to such limit for any 1 person so injured or killed, of $20,000.00, exclusive of interest and costs, on account of injury to, or death of, more than 1 person, in any 1 accident, and

(c) The maximum amount or limit of $5,000.00, exclusive of interest and costs, for damage to property in any 1 accident. L. 1952, c. 174, p. 576, § 9; L. 1958, c. 99, p. 557, § 3.

• • •

39:6–73. Limitation on amounts payable from fund

No order shall be made for the payment, and the treasurer shall make no payment, out of the fund, of

(a) Any claim for damage to property for less than $100.00.

(b) The first $100.00 of any judgment for damage to property or of the unsatisfied portion thereof, or

(c) The unsatisfied portion of any judgment which, after deducting $100.00 therefrom if the judgment is for damage to property, exceeds

(1) the maximum or limit of $10,000.00, exclusive of interest and costs, on account of injury to, or death of, 1 person in any 1 accident, and

(2) the maximum amount or limit, subject to such limit for any 1 person so injured or killed, of $20,000.00, exclusive of interest and costs, on account of injury to, or death of, more than 1 person, in any 1 accident, and

(3) the maximum amount or limit of $5,000.00, exclusive of interest and costs, for damages to property in any 1 accident, Provided, that such maximum amounts shall be reduced by any amount received or recovered as specified in subparagraph (m) of section 10.[1]

(d) Any claim for damage to property which includes any sum greater than the difference between said maximum amounts and the sum of $100.00, and any amount paid out of the fund in excess of the amount so authorized may be recovered by the treasurer in an action brought by him against the person receiving the same. L. 1952, c. 174, p. 582, § 13; L. 1958, c. 99, p. 560, § 5.

* * *

39:6–84. Judgment against director

When a judgment is obtained against the director, in an action brought under this act, upon the determination of all proceedings including appeals and reviews, the court shall make an order directed to the treasurer directing him to pay out of the fund to the plaintiff in an action the amount thereof which does not exceed $10,000.00, exclusive of

interest and costs, on account of injury to, or death of, 1 person and, subject to such limits for the death of, or injury to, any 1 person, does not exceed $20,000.00, exclusive of interest and costs, on account of the injury to, or death of, more than 1 person, in any 1 accident, provided that such maximum amount shall be reduced by any amount received or recovered by the plaintiff as specified in subparagraph (m) of sections 10.[1] L. 1952, c. 174, p. 588, § 24; L. 1955, c. 1, p. 23, § 15; L. 1958, c. 99, p. 562, § 8.

• • •

APPENDIX B.

(1)

ORDER TO PAY OUT OF THE UNSATISFIED CLAIM AND JUDGMENT FUND.

The within matter having been presented to the Court by Meredith and Meredith, Esquires, Regina H. Meredith, Esquire, appearing, attorneys for the Plaintiffs, in the presence of Jamieson, Walsh & McCardell, Esquires, Edward McCardell, Esquire, appearing, attorneys for the Defendant, upon notice to the Fund, pursuant to N. J. S. A. 39:6–69, the Court being satisfied that the matters stated in Plaintiffs' verified claim are true and the Plaintiffs have no cause of action for the damages claimed against any person other than the Defendant in this suit:

It is, on this 2nd day of July, 1965, ORDERED that the Treasurer of the State of New Jersey pay to Epifonio Garcia, Juan Comacho Ruiz, Migdonio Morales and Andre Leon Pagan, the Plaintiffs herein, and their attorneys, Meredith and Meredith, Esquires, the sum of Twenty Thousand Dollars ($20,000.00), together with costs of suit, representing the maximum amount or limit recoverable from the Fund, on account of injury to more than 1 person in any 1 accident.

/s/ GEORGE H. BARLOW,
GEORGE H. BARLOW, *J. S. C.*

APPENDIX B.

(2)

OPINION.

The opinion of the Court was delivered PER CURIAM.

This proceeding involves an attack on the constitutionality of *N. J. S. A.* 39:6–69(*b*), (and *N. J. S. A.* 39:6–73 and 84 which are related to and dependent upon *N. J. S. A.* 39:6–69(*a*) and (*b*)) of the Unsatisfied Claim and Judgment Fund Law, *N. J. S. A.* 39:6–61 *et seq.* Section 69(*a*), which is not assailed, provides for payment by the Unsatisfied Claim and Judgment Fund up to a maximum of $10,000, exclusive of interest and costs, of a judgment recovered by one person injured in any one accident through the negligence of an uninsured automobile driver. Section 69(*b*) provides:

> "The maximum amount or limit, subject to such limit for any 1 person so injured or killed, of $20,000.00, exclusive of interest or costs, on account of injury to, or death of, *more than 1* person, in any 1 accident, * * *." (Emphasis added.)

The four plaintiffs, passengers in an uninsured automobile driven by an uninsured driver, were injured in a single accident. They recovered judgments totaling $85,000, only one of them for an amount under $10,000, it being for $8,500. Three of the plaintiffs whose individual judgments exceeded $10,000 demanded $10,000 each from the Fund; the third sought $8,500. The Fund refused such payments, ruling that collectively the four plaintiffs were entitled under *N. J. S. A.* 39:6–69(*b*) to a total amount of $20,000, that sum to be prorated among them.

The ruling of the Fund was concurred in by the Superior Court, Law Division, and we certified the ensuing appeal therefrom before it was heard in the Appellate Division.

Plaintiffs contend that section 69(b) is unconstitutional because the limitation imposed thereby denies them equal protection of the law and discriminates against them in

violation of the Federal and State Constitutions, and more particularly, the Fourteenth Amendment of the United States Constitution. They urge that since one person injured in one accident can recover $10,000 from the Fund under section 69(*a*), to limit the recovery of four persons, as section 69(*b*) purports to do, to a collective amount of $20,000 in one accident is to treat them unequally and to discriminate against them in the sense prohibited by the Constitution.

Plaintiffs accept the constitutionality of section 69(*a*), and make no challenge as to its validity. In fact the thesis of their case is that when section 69(*b*) is excised from the statute as unconstitutional, section 69(*a*) remains as the basis for recovery of $10,000 each, by three of them and for $8,500 by the fourth. In support of such result they contend that section 69(*a*) should be construed to create a benefit up to $10,000 for each person injured, no matter how many persons are injured, so long as all of them are injured in one accident.

As is the practice when constitutionality of a statute is attacked, we limit our consideration of the challenge to the precise basis on which it is presented. So considered, obviously plaintiffs position cannot be sustained. It is clear beyond reasonable doubt that the Legislature intended section 69(*a*) to relate only to the situation where one person is injured in one accident, and to provide a maximum recovery of $10,000 for such person. If we were to strike down section 69(*b*) alone and then construe section 69(*a*) as plaintiffs would have us do, not only would we be disregarding the plain language of the statute, but also we would be increasing the monetary liability of the Fund far beyond the limit intended by the Legislature. The judicial branch of the government has no such power.

Under the circumstances, since section 69(*a*) is not susceptible of the interpretation urged by plaintiffs, they would gain nothing by an invalidation of section 69(*b*). *Cf. State* v. *Rush*, 46 *N. J.* 399, 409 (1966). Consequently there is no occasion to deal further with the constitutional argument. Accordingly the order of the Law Division is affirmed.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 1 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 735

EPIFONIO GARCIA, *et al.*,

Appellants,

vs.

BALBINO MORALES,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Intervenor-Appellee, State of New Jersey, Unsatisfied Claim and Judgment Fund,
State House Annex,
Trenton, New Jersey 08625.

ALAN B. HANDLER,
First Assistant Attorney General,
Of Counsel.

RICHARD NEWMAN,
Deputy Attorney General,
On the Brief.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-4811-12

TABLE OF CONTENTS

	PAGE
MOTION TO DISMISS	1
OPINION BELOW	2
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	3
A. Proceedings and Facts Below	3
B. The Unsatisfied Claim and Judgment Fund Law in New Jersey and its Relationship to the Financial Responsibility of the Uninsured Motorist at the Time of the Accident	7
C. The Decision of the New Jersey Supreme Court	11
SUMMARY OF ARGUMENT	12
ARGUMENT:	
Point I—The judgment of the New Jersey Supreme Court is based on an adequate and independent non-federal ground which precludes review by this court	15
Point II—The statutory maximum contained in N.J.S.A. 39:6-69(b) and its corollary provisions under the Unsatisfied Claim and Judgment Fund Law pursuant to which payment is made to persons injured in a single accident to assure some measure of relief where a judgment is recovered against an uninsured motorist is not violative of the due process clauses of the Federal and State Constitutions, nor does it constitute an unconstitutional taking of property without just compensation	17

PAGE

Point III—To assure equal and like treatment on a minimum uniform basis, the Legislature provided that the aggregate limit of liability principle is applicable whether the culpable motorist is insured or uninsured where two or more persons are injured in a single accident..... 19

CONCLUSION 25

Cases Cited

Buzzone v. Hartford Accident and Indemnity Co., 23 N. J. 447, 129 A. 2d 561 (1957)..... 8

Collins v. State Board of Social Welfare, 248 Iowa 369, 81 N. W. 2d 4 (1957)..... 23, 24

Corrigan v. Gassert, 27 N. J. 227, 142 A. 2d 209 (1958) 8

Davis v. Wechsler, 263 U. S. 22..... 16

Dixon v. Gassert, 26 N. J. 1, 138 A. 2d 14 (1958)..18, 21, 24

Douglas v. Harris, 35 N. J. 270, 173 A. 2d 1 (1961).. 8

Enterprise Irrigation District v. Farmers Mutual Canal Co., 243 U. S. 157..... 15

Fox Film Corp. v. Muller, 296 U. S. 207..... 15

Gaar, Scott & Co. v. Shannon, 223 U. S. 468..... 17

Hale v. Akers, 132 U. S. 554..... 17

Henry v. Mississippi, 379 U. S. 443, rehearing denied, 380 U. S. 926, on remand, 174 So. 2d 348 (Miss. Sup. Ct. 1965), motion denied, 381 U. S. 908..... 16

Herb v. Pitcairn, 324 U. S. 117..... 15

Holmberg v. Aten, 68 N. J. Super. 73, 171 A. 2d 667 (App. Div. 1961)..... 18

Lindsay v. Boles, 61 N. J. Super. 516, 161 A. 2d 324 (Law Div. 1960)..... 9

PAGE

Mean v. Coombs, 47 N. J. 348, 221 A. 2d 10 (1966) 24

Murdock v. Memphis, 87 U. S. (20 Wall.) 590 15

N.A.A.C.P. v. Alabama, 357 U. S. 449 16

Pistoria v. Buchowski, 46 N. J. Super. 495, 134 A. 2d 830 (Law Div. 1957) 8

Proskurnja v. Elder, 73 N. J. Super. 466, 180 A. 2d 200 (Law Div. 1962) 7

Robson v. Rodriguez, 26 N. J. 517, 141 A. 2d 1 (1958) 7, 18, 20, 21, 24

Smith v. Cahoon, 283 U. S. 553 24

State Farm Mut. Auto Ins. Co. v. Wall, 87 N. J. Super. 543, 210 A. 2d 109 (Law Div. 1965) 10

Ward v. Love County, 253 U. S. 17 16

Wood v. Chesborough, 228 U. S. 672 17

United States Constitution Cited

Fourteenth Amendment 5, 11

New Jersey Constitution Cited

1947—

Article I, Paragraphs 1, 5 5

Statutes Cited

N.J.S.A. 39:6-23 to N.J.S.A. 39:6-60 (Motor Vehicle Security-Responsibility Law) 7, 8

N.J.S.A. 39:6-25 8-11

N.J.S.A. 39:6-31 ..... 9, 10

N.J.S.A. 39:6-46 ..... 9, 10

N.J.S.A. 39:6-61 to N.J.S.A. 39:6-91 (Unsatisfied Claim and Judgment Fund Law) 2, 3, 6-8, 10, 24, 25

PAGE

N.J.S.A. 39:6-63 ..... 9, 23

N.J.S.A. 39:6-69 3

N.J.S.A. 39:6-69(a) 5, 10, 12-14, 19, 20, 22

N.J.S.A. 39:6-69(b) 2, 5-7, 10-14, 17, 19, 20, 22

N.J.S.A. 39:6-70 5

N.J.S.A. 39:6-73(c)(1) 19

N.J.S.A. 39:6-73(c)(2) 5, 19

N.J.S.A. 39:6-77 ..... 9, 18

N.J.S.A. 39:6-92 to N.J.S.A. 39:6-104 (Motor Vehicle Liability Security Fund Act)..... 7, 23

P.L. 1952, chs. 173-174, Secs. 3, 9, 15, 16, 24 22

P.L. 1958, chs. 95, 99, Secs. 1-4, 6 22

Rule Cited

R.R. 4:37-2 6

Text Cited

Elder, The Unsatisfied Judgment Fund and the Irresponsible Motorist, Current Trends in State Legislation (1953-1954):

pp. 45, 156 10

pp. 156-159 .....21, 22

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 735

EPIFONIO GARCIA, JUAN C. RUIZ, MIGDONIO MORALES and TOMAS LEON, as Guardian *Ad Litem* of ANDRE LEON PAGAN,

Appellants,

vs.

BALBINO MORALES,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

Motion to Dismiss

Pursuant to Rule 16(b) of this Court, the Attorney General of the State of New Jersey, on behalf of the State of New Jersey, and the Unsatisfied Claim and Judgment Fund, moves to dismiss this appeal on the ground that the judgment rests on an adequate non-federal basis and that it does not present a substantial federal question.

Opinion Below

The opinion from which the appellant appeals to this Court is that of the Supreme Court of New Jersey, decided June 6, 1966, reported in 47 N. J. 269, 220 A. 2d 198 (1966), affirming the order of the Superior Court, Law Division. No written opinion was rendered by the trial court. The Supreme Court of New Jersey denied a petition for rehearing on July 1, 1966.

Questions Presented

1. Is the judgment of the New Jersey Supreme Court predicated on an adequate and independent non-federal ground which would bar review by this Court?

2. Does the statutory maximum of $20,000 contained in N.J.S.A. 39:6-69(b) and its correlative provisions under the New Jersey Unsatisfied Claim and Judgment Fund Law, pursuant to which payment is made to persons injured in a single accident to assure some measure of relief where a judgment is recovered against an uninsured motorist violate any federal constitutional guarantees as:

   (a) violative of the guaranty of the due process clause;

   (b) violative of the provisions against the taking of property without just compensation;

   (c) violative of the guaranty of the equal protection clause?

3. Have the appellants raised a substantial federal question by asserting without demonstration that the New Jersey Unsatisfied Claim and Judgment Fund violates federal constitutional guarantees?

Statement of the Case

A. Proceedings and Facts Below.

An automobile negligence action was brought by four passengers, the appellants herein, against the uninsured motorist, Balbino Morales, the named appellee herein. Balbino Morales was an uninsured New Jersey owner and operator of an automobile involved in a one-car accident. Service was effected and the action was defended by the New Jersey Unsatisfied Claim and Judgment Fund.

Judgment was entered in the Law Division of the Superior Court of New Jersey against the defendant in favor of the appellants, all of whom were passengers in the Morales vehicle at the time of the accident. The amounts totalling $85,000.00, of the judgment for the individual plaintiffs, were as follows:

Epifonio Garcia	$30,000.00
Juan Comacho Ruiz	8,500.00
Migdonio Morales	30,000.00
Andre Leo Pagan	16,500.00

No appeal from the judgment was taken.

Thereafter, as required by the Unsatisfied Claim and Judgment Fund Law, appellants served written notice upon the Board of their application for an Order directing payment out of the Fund. This motion was made pursuant to N.J.S.A. 39:6-69 which provides as follows:

> "When any qualified person recovers a valid judgment in any court of competent jurisdiction in this State, against any other person, who was the operator or owner of a motor vehicle, for injury to, or death of, any person or persons, or a similar valid

judgment in such court against such a defendant for an amount in excess of $100.00, exclusive of interest and costs, for damages to property except property of others in charge of such operator or owner or such operator's or owner's employees, arising out of the ownership, maintenance or use of the motor vehicle in this State on or after April 1, 1955, and any amount remains unpaid thereon in the case of a judgment for bodily injury or death, or any amount in excess of $100.00 remains unpaid thereon in case of a judgment for damage to property, such judgment creditor may, upon the termination of all proceedings, including reviews and appeals in connection with such judgment, file a verified claim in the court in which the judgment was entered and, upon 10 days' written notice to the board may apply to the court for an order directing payment out of the fund, of the amount unpaid upon such judgment for bodily injury or death, which does not exceed, or upon such judgment for damage to property which exceeds the sum of $100.00 and does not exceed—

"(a) The maximum amount or limit of $10,000.00, exclusive of interest and costs, on account of injury to, or death of, 1 person, in any 1 accident, and

"(b) The maximum amount or limit, subject to such limit for any 1 person so injured or killed, of $20,000.00, exclusive of interest and costs, on account of injury to, or death of, more than 1 person, in any 1 accident, and

"(c) The maximum amount or limit of $5,000.00, exclusive of interest and costs, for damage to property in any 1 accident."

More particularly, appellants sought payments of the judgments subject to the $10,000 per capita limitation as set forth in N.J.S.A. 39:6-69(a) (hereinafter sometimes referred to as "section 69(a)), the proviso applicable where one person is injured in a single accident. N.J.S.A. 39:6-69(b) (hereinafter sometimes referred to as "section 69-(b)), applies where two or more persons are injured in any one accident. The notice set forth that the appellants would apply for an Order directing such payment as follows:

Epifonio Garcia	$10,000.00
Juan Comacho Ruiz	8,500.00
Migdonio Morales	10,000.00
Andre Leo Pagan	10,000.00

The Notice of Motion was accompanied by the requisite affidavit of the appellants pursuant to N.J.S.A. 39:6-70 and a Memorandum of Law. The appellants essentially sought the entry of an Order directing the individual payments noted immediately above, without regard to the limitations imposed by N.J.S.A. 39:6-73(c)(2), or those expressed in N.J.S.A. 39:6-69(b), on the ground that the limitations were prohibited by paragraphs 1 and 5 of Article I of the New Jersey Constitution, 1947, and Amendment XIV of the United States Constitution, specifically:

(1) The limitations constituted a denial of equal protection of the law to the plaintiffs.

(2) The limitations are arbitrary, capricious and unreasonable and thus work a denial of due process.

(3) The limitations imposed bear no real or substantial relation to the objects sought to be obtained by the legislation and, hence, effect a denial of due process.

(4) The classification inherent in the limitations is arbitrary and discriminatory and thus in derogation of the equal protection and due process sections cited.

An order was entered on July 1, 1965 by the Law Division of the Superior Court directing payment on a *pro rata* basis limited to the aggregate amount of $20,000 in accord with N.J.S.A. 39:6-69(b), the proviso applicable where two or more persons are injured in one accident.

An appeal was taken by the appellants to the Appellate Division of the Superior Court from the Trial Court's Order.

Upon application, the Superior Court, Appellate Division, on September 22, 1965, permitted the Attorney General to intervene in this appeal since the constitutionality of the Unsatisfied Claim and Judgment Fund Law had been drawn into question. R.R. 4:37-2.

On or about September 28, 1965 invoices for payment were forwarded to appellants' attorney. It was expressly understood that payment would be made without prejudice and without affecting in any way the within appeal.

Before argument was heard in the Appellate Division, the cause was certified directly to the Supreme Court of New Jersey. The Judgment of the Supreme Court of New Jersey, affirming the order made by the trial court, was entered on June 6, 1966 and a Petition for Rehearing, timely filed, was denied on July 1, 1966. A Notice of Appeal was filed in the Supreme Court of New Jersey on September 1, 1966.

B. The Unsatisfied Claim and Judgment Fund Law in New Jersey and its Relationship to the Financial Responsibility of the Uninsured Motorist at the Time of the Accident.

A strong legislative policy of assuring financial protection for innocent victims of automobile accidents is expressed in the several statutes in New Jersey dealing with financial responsibility and automobile liability insurance. Unsatisfied Claim and Judgment Fund Law, N.J.S.A. 39:6-61 to 39:6-91; Motor Vehicle Security-Responsibility Law, N.J.S.A. 39:6-23 to 39:6-60; Motor Vehicle Liability Security Fund Act, N.J.S.A. 39:6-92 to 39:6-104. These laws are not mere regulations of the relations between the insurer and the insured, but their purpose is to

> "induce the owners and operators of motor vehicles to procure liability insurance and, therefore, mitigate the evil sought to be corrected by those laws—the helplessness of persons injured by financially irresponsible motorists in the maintenance and use of their motor vehicles." *Proskurnja* v. *Elder,* 73 N. J. Super. 466, 474, 180 A. 2d 200, 204 (Law Div. 1962).

Within this comprehensive statutory scheme, the Fund Law, as the New Jersey Supreme Court states in *Robson* v. *Rodriguez,* 26 N. J. 517, 524-525, 141 A. 2d 1, 5 (1958), has the following legislative objective:

> "The Unsatisfied Claim and Judgment Fund Law is remedial legislation that was enacted as a result of concern over the economic hardship imposed upon persons who sustain personal injuries or property damage, or both, caused by financially irresponsible and uninsured motorists, where the claimants have no other source of compensation. *Dixon* v. *Gassert,*

> 26 N. J. 1 (1958). Its primary purpose is to mitigate this evil which springs in the main from the negligent operation of motor vehicles by uninsured persons. To this end the act provides for the creation of a fund, supported by imposts upon uninsured motor vehicle owners and insurance companies, out of which uncollectible judgments against uninsured or unknown motorists can be satisfied subject to certain limitations." See also, *Douglas* v. *Harris*, 35 N. J. 270, 279, 173 A. 2d 1, 5-6 (1961).

Thus, while the purpose of the Fund is to provide some measure of relief to those persons who come within the class intended to be protected, the benefits are not paid in lieu of the full amount of the judgment. *Corrigan* v. *Gassert*, 27 N. J. 227, 233, 142 A. 2d 209, 212 (1958); *Pistoria* v. *Buchowski*, 46 N. J. Super. 495, 497, 134 A. 2d 830, 831 (Law Div. 1957).

In effect, the Fund Law also serves, in part, to fill the gap left open by the requirement that proof of financial responsibility was only sought as to *future* accidents, leaving the victim to bear the loss of the "initial accident". See, *Buzzone* v. *Hartford Accident and Indemnity Co.*, 23 N. J. 447, 453, 129 A. 2d 561, 564 (1957). The Motor Vehicle Security-Responsibility Law requires the immediate deposit of security from uninsured persons involved in an accident causing bodily injury or property damage in varying minimal amounts on pain of license suspension. See, *e.g.*, N.J.S.A. 39:6-25. The minimum statutory insurance limits required for the heretofore uninsured motorist following his first accident reduced to judgment must provide:

> ". . . if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of

> not less than $10,000.00 because of bodily injury to or death of 1 person in any 1 accident and, subject to said limit for 1 person, to a limit of not less than $20,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident. . . ." N.J.S.A. 39:6-25.

Similar minimum limits are required where proof of future financial responsibility is required by the Director of the Division of Motor Vehicles under certain statutorily enumerated circumstances not pertinent here. N.J.S.A. 39:6-31; see also, N.J.S.A. 39:6-46.

Prior to his initial accident, every person registering an uninsured motor vehicle is obliged to pay to the Director of Motor Vehicles, in addition to any other fee prescribed by any other law, the "Unsatisfied Claim and Judgment Fund Fee" fixed by the Director for that registration license year. N.J.S.A. 39:6-63 [The fee shall in no case exceed $25.00.] The total amount of these fees, plus deficiency assessments levied against insurers writing liability insurance in this State are the revenues with which the Fund is maintained. N.J.S.A. 39:6-63.

The Fund Law sets up in detail the circumstances, conditions and procedures under which, and the extent to which, a person who has recovered a judgment against an uninsured motorist may resort to the Fund for "some measure of relief." *Lindsay* v. *Boles*, 61 N. J. Super. 516, 519, 161 A. 2d 324, 326 (Law Div. 1960). Most significantly, the claimant, after receiving payment from the Fund, still retains as against the judgment-defendant, the benefit of the unpaid portion of the principal and interest due on the judgment. *Lindsay* v. *Boles*, *supra*, p. 525. By the express provisions of N.J.S.A. 39:6-77,

> "... if more money is collected upon any such judgment than the amount paid out of the fund; the director shall pay the balance after reimbursing the fund, to the judgment creditor."

Thus, instead of holding a presently uncollectible paper judgment, the appellants, as they did in this case, receive a cash advance from the Fund with the continuing prospect that at some future date, the balance of the judgment may be collected and paid. In the interim, the Fund, which may be in a better position to wait out the judgment debtor, absorbs part of the economic loss occasioned by the accident restoring some measure of relief to appellants. See Elder, *The Unsatisfied Judgment Fund and the Irresponsible Motorist, Current Trends in State Legislation,* (1953-1954), p. 45, at p. 156.

It cannot be overstressed that the Fund Law was not intended to be a substitute for an automobile liability policy. It was designed, in part, to stimulate the voluntary purchase of insurance. *State Farm Mut. Auto. Ins. Co.* v. *Wall,* 87 N. J. Super. 543, 559-560, 210 A. 2d 109, 117-118 (Law Div. 1965).

It should be readily apparent that the limitation of $10,000 applicable to one person in a single accident (N.J. S.A. 39:6-69(a)), and the limitation of $20,000 applicable to two or more persons injured in one accident corresponds with the similar limitations under the Motor Vehicle Security-Responsibility Laws. N.J.S.A. 39:6-25, -31, -46. These corresponding limitations were not accidentally composed but were formulated to fit within the framework of an over-all statutory plan. Thus, appellants' constitutional attack on the aggregate limit proviso of section 69(b) where two or more persons are injured in a single accident, if it were successful, would, in effect, permit a per-

son to recover more when injured by an uninsured motorist than would be recoverable if injury was occasioned by a financially responsible motorist pursuant to the Motor Vehicle Security-Responsibility Laws. N.J.S.A. 39:6-25. Instead of achieving a minimal level of uniform treatment, regardless of whether the motorist is insured or uninsured, the appellants seek to disrupt the carefully plotted legislative scheme working a reverse discrimination in favor of the person injured along with others, by the uninsured motorist. Thus, contrary to appellants' contention, the use of aggregate limits of liability when employed in "state action" preserve standards of uniformity to all victims in automobile accidents. The result thereby achieved is in harmony with the comprehensive legislative program dealing with the problem of the financially irresponsible motorist and the victims of his negligence in New Jersey.

C. The Decision of the New Jersey Supreme Court.

The Supreme Court of New Jersey recognized the constitutional attack being leveled by the appellants and capsulized their argument in very specific terms. Appellants were claiming that N.J.S.A. 39:6-69(b) was unconstitutional because the aggregate limitation of $20,000 imposed thereby denies them equal protection of the law and discriminates against them in violation of the Federal and State Constitutions, and more particularly, the Fourteenth Amendment to the United States Constitution. Since one person injured in one accident can recover a maximum of $10,000 from the Fund under section 69(a), to limit the recovery of four persons, as section 69(b) purports to do, to a collective amount of $20,000 in one accident is to treat them unequally and to discriminate against them in the sense prohibited by the Constitution (A4a to A5a).

Appellants, it was noted, did not challenge the validity of section 69(a). In fact, they contended that when section 69(b) is excised from the statute as unconstitutional, section 69(a) remains as the basis for recovery of $10,000 each, by three of them and for $8,500 by the fourth. They argued that section 69(a) should be construed to create a benefit up to $10,000 for each person injured, no matter how many persons are injured, so long as all of them are injured in one accident (A5a).

The New Jersey Supreme Court held that the Legislature intended section 69(a) to relate only to the situation where one person is injured in one accident, and to provide a maximum recovery of $10,000 for such person. The Court pointed out that the plain language of the statute, ". . . the maximum amount or limit of $10,000, exclusive of interest and costs, on account of injury to, or death of, 1 person, in any 1 accident . . ." dictated such an interpretation. The Court further indicated that if it were to strike down section 69(b) alone and then construe section 69(a) as appellants suggest, the monetary liability of the Fund would be increased far beyond the limit intended by the Legislature. In the case at bar alone, the monetary liability would have been increased by $18,500 beyond the Legislature's contemplation.

Under these circumstances, since section 69(a) was not, as a matter of state law, susceptible of the interpretation urged by the appellants, they would gain nothing by an invalidation of section 69(b), and the New Jersey Supreme Court did not consider further the constitutional arguments.

Summary of Argument

Appellants do not contend before this Court that the New Jersey Supreme Court erroneously construed the New Jer-

sey statute, N.J.S.A. 39:6-69(a), which limits a maximum recovery of $10,000 where one person is injured in one accident. This is clearly a question solely of state law and of itself involves no federal question. Appellants, nevertheless, seek to sustain their standing in this Court by asserting that the proviso of N.J.S.A. 39:6-69(b), limiting on an aggregate basis the maximum amount payable where two or more persons are injured in a single accident, is unconstitutional on its face (Jurisdictional Statement, p. 11). Essentially, appellants are arguing that the use of aggregate limits of liability may be utilized by private insurers, but when incorporated by a state legislature as a means of limiting liability on the operation of a State Fund, the aggregate principle is constitutionally repugnant (Jurisdictional Statement, p. 13).

Appellants further assert that the aggregate limitation bears no reasonable relationship to the end of protecting innocent victims of uninsured motorists. While affording full "coverage" to 1 or 2 persons injured in a single accident, it effects reduced "coverage to individuals in only the most serious accidents where the needs of the victims and the needs of the community are the greatest" (Jurisdictional Statement, pp. 11-12).

Appellants also urge that there is a taking without compensation. Monies available to A, it is contended, are decreased solely to make funds available to B, C and D. In short, A's substantive interest in, or inchoate right to, property is taken, *pro tanto*, in order to enable a governmental use of such funds, *viz.*, benefiting B, C and D (Jurisdictional Statement, pp. 12-13).

Appellants further maintain that the statutory classification, *i.e.*, 1 person injured vs. 2 or more persons injured, is constitutionally deficient. The classification arises out

of pure chance depending upon how many persons are injured in an accident, rather than providing a "standard benefit" for injured victims as a class. In effect, appellants claim that there is unequal treatment among injured victims "even though there be identity of injury and identity of damage" (Jurisdictional Statement, p. 12).

The State of New Jersey argues herein that the judgment rendered by the New Jersey Supreme Court rests on an adequate and independent non-federal basis so as to preclude this Court from review. Clearly, the State Supreme Court's opinion indicates that the appellants, as a matter of state law, cannot be treated individually under section 69(a) to secure additional benefits. Thus, any further discussion of the constitutionality of section 69(b) would be tantamount to offering an advisory opinion.

It is further argued herein that the statutory maximum contained in N.J.S.A. 39:6-69(b) and its corollary provisions under the Unsatisfied Claim and Judgment Fund pursuant to which payment is made to persons injured in a single accident to assure some measure of relief where a judgment is recovered against an uninsured motorist is not violative of the due process clause of the Federal and State Constitutions, nor does it constitute an unconstitutional taking of property without just compensation. There is no "loss" or "taking" in a constitutional sense where the appellants have been financially remedied to some minimum extent and hold the continuing prospect as a judgment creditor of collecting the balance of the judgment.

It is further argued by the State that no denial of equal protection results because the size of a person's payment from the Fund in any given accident depends upon whether he is singly injured or injured along with others. The aggregate limits of liability principle forms part of the

comprehensive legislative scheme to assure a minimum, uniform level of recovery regardless of whether a person along with others, is injured by an insured or uninsured motorist.

ARGUMENT

POINT I

The judgment of the New Jersey Supreme Court is based on an adequate and independent non-federal ground which precludes review by this court.

It is a well-settled principle that this court will not review judgments of state courts that rest on adequate and independent state grounds. *Murdock* v. *Memphis,* 87 U. S. (20 Wall.) 590, 636; *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.,* 243 U. S. 157, 164; *Fox Film Corp.* v. *Muller,* 296 U. S. 207. This Court in *Herb* v. *Pitcairn,* 324 U. S. 117, 125-126, commented on the rationale supporting this principle when it stated:

> "The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments; not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion."

The case at bar would serve as a classic example of a Court delivering an advisory opinion which would leave unaffected the judgment of the State court. See *Henry* v. *Mississippi*, 379 U. S. 443, 446-447, *rehearing denied*, 380 U. S. 926, *on remand*, 174 So. 2d 348 (Miss. Sup. Ct. 1965), *motion denied*, 381 U. S. 908. In fact, this Court by rendering an advisory opinion, would be doing the very thing which the New Jersey Supreme Court refrained from doing.

The New Jersey Supreme Court made it indelibly clear that it did not rule on the constitutional questions raised by the appellants. Nor did it evade dealing with them because of some rule of state pleading or procedure so as to prevent review of the decision upon the constitutional questions or to avoid a decision relative to federally guaranteed rights. See *Ward* v. *Love County*, 253 U. S. 17, 22-23; *Davis* v. *Wechsler*, 263 U. S. 22, 24-25; *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, 455-458.

The Supreme Court of New Jersey interpreted state substantive law when it held that section 69(a) related only to the situation where one person is injured in one accident and that section could have no applicability to the facts presented here where four persons were injured in a single accident. Appellants were afforded and received the $20,000 maximum benefit payable under section 69(b). Thus, since the appellants would gain nothing by an invalidation of section 69(b), no consideration was given to the constitutional arguments made by the appellants. The Court's restraint in not speaking to the constitutional issues, not only fulfilled the objective of avoiding constitutional adjudication, but further exemplified the Court's own obvious reluctance to issue advisory rulings.

There is no doubt that the state court's decision is based exclusively on a non-federal ground in this case. Similarly, there can be no claim that federal law has been erroneously interpreted when the state court has not treated federal law at all. Inasmuch as this Court may not review a decision where a state court has an alternative holding in its opinion, one of which is non-federal, then, *a fortiori*, this Court must surely bar its jurisdiction where the state court decides solely on a non-federal ground and declines to consider the federal questions. *Wood* v. *Chesborough*, 228 U. S. 672. Moreover, the non-federal ground, in this case, is sufficiently broad to determine the rights of the appellants herein and is obviously independent of any considerations of federal law. See *Gaar, Scott & Co.* v. *Shannon*, 223 U. S. 468; *Hale* v. *Akers*, 132 U. S. 554, 564. Its adequacy is not assailable under these circumstances.

It is respectfully submitted that the decision of the New Jersey Supreme Court contains an independent, non-federal ground which would preclude this Court from review.

POINT II

The statutory maximum contained in N.J.S.A. 39:6-69(b) and its corollary provisions under the Unsatisfied Claim and Judgment Fund Law pursuant to which payment is made to persons injured in a single accident to assure some measure of relief where a judgment is recovered against an uninsured motorist is not violative of the due process clauses of the Federal and State Constitutions, nor does it constitute an unconstitutional taking of property without just compensation.

Appellants' due process and "taking without compensation" arguments are apparently the product of their misconception of the Legislature's reason for enacting this

statute, and is accordingly untenable. As indicated *infra*, the New Jersey Supreme Court in *Robson* v. *Rodriguez, supra*, spelled out the legislative objective in clear and unequivocal terms. The purpose of the Fund was to provide some measure of relief to those persons who sustain personal injuries or property damage, or both, caused by financially irresponsible and uninsured motorists, where no other source of compensation is available. *Dixon* v. *Gassert*, 26 N. J. 1, 138 A. 2d 14 (1958).

The Court in *Holmberg* v. *Aten*, 68 N. J. Super. 73, 83-84, 171 A. 2d 667, 672 (App. Div. 1961), where the claimant's application for payment from the Fund was denied on the ground that mandatory deductions for insurance benefits received exceeded the amount of her $5,000 negligence judgment, described the statutory purpose in the following language:

> "The Fund is not a substitutionary welfare agency—and in this sense it is available to wealthy and poor alike—but it is a legislative mechanism for assuring victims of another's negligence financial remedy to some minimum extent *for the damages caused by that negligence.*"

As significant as the limited purpose of the statute is, the means by which the objective is accomplished is equally noteworthy. The claimant, after receiving payment from the Fund, still retains as against the judgment-defendant, the benefit of the unpaid portion of the principal and interest due on the judgment. For

> ". . . if more money is collected upon any such judgment than the amount paid out of the fund, the director [of the division of motor vehicles] shall pay the balance, after reimbursing the fund, to the judgment creditor." N.J.S.A. 39:6-77.

In effect, the claimants receive a cash advance from the Fund with the continuing prospect that at some future date, the balance of the judgment will be collected and paid. The economic hardship which would have fallen squarely on the claimants is shifted partially to the Fund.

It is difficult to fathom the constitutional "loss" or "taking" suffered by the appellants under these circumstances. Arguing, therefore, a denial of due process or a taking of an inchoate interest in property without just compensation presupposes that a "loss" or a "taking" has occurred. Factually, the premise for appellants' argument is nonexistent and the whole argument must fall.

POINT III

To assure equal and like treatment on a minimum uniform basis, the Legislature provided that the aggregate limit of liability principle is applicable whether the culpable motorist is insured or uninsured where two or more persons are injured in a single accident.

Appellants further contend that a denial of equal protection results because the size of a person's payment from the Fund in any given accident depends upon whether he is singly injured or injured along with others.

If he were singly injured, it is asserted, he may be eligible to receive the statutory maximum of $10,000. N.J.S.A. 39:6-73(c)(1); 39:6-69(a); whereas, if he were injured along with others in a single accident, he would be forced to share in the $20,000 maximum fund with the others, thereby receiving less than the statutory maximum of $10,000 to which he would allegedly otherwise be entitled. N.J.S.A. 39:6-73(c)(2); 39:6-69(b). The differing amounts

payable to a person, depending upon whether he is injured with or without others, does not, however, result in a denial of equal protection of the laws.

The constitutional requirement of equal protection is satisfied where all persons under like circumstances are treated in a like or similar manner. *Robson* v. *Rodriguez, supra.*

Before considering the basis of the classification, it is necessary to define the classes of persons affected by the legislation and the treatment of such persons within the class. Any person injured alone in any accident may be eligible to receive the statutory maximum of $10,000. N.J.S.A. 39:6-69(a). Correspondingly, when four persons (or six or eight) are injured in a single accident, they are all subject to that proportion the amount of their individual judgment bears to the same $20,000 maximum limitation in these circumstances. N.J.S.A. 39:6-69(b). Contrary to appellants' cry of unequal protection of the law, there is clearly equal protection under the law to the appellants, all of whom are similarly situated. No discriminatory treatment results *vis a vis* one person singly injured in a single accident from another person singly injured in a single and different accident. They are each subject to the statutory maximum of $10,000. Nor is there discrimination between a person injured along with others in a single accident and another person injured with others in a single and different accident. They are each subject to the statutory maximum of $20,000 to the extent it may be diminished by the proportion the judgment recovered by the other injured persons in the same single accident bears to the $20,000 limitation.

In effect, the legislature has created two classes of beneficiaries instead of one identical class as assumed by appel-

lant. They are: (1) persons singly injured in one accident; and (2) persons injured along with others in one accident. Within the classes, there is no discrimination. Although there may be a varying number of persons within the class subject to the $20,000 maximum, the variance in numbers within this class does not result in different treatment. It is true that the dollar and cents result may be different as between three injured persons in a single accident and four injured persons in a single accident, but the result depends upon the extent of the injury to each person, the size of the judgment reflecting the gravity of the injury and the proportion the individual judgment bears to the same $20,000 limitation applicable to all members within this class.

It should be recalled that the goal envisioned by the Legislature is far more limited than the one desired by the appellants, whose argument heralds a limitation linked to the need of the injured person. Where the injury may be the most severe as mirrored in the judgment recovered, the unreasonable limitation of the statute, it is argued, offers no flexibility. Pushed to its logical extreme, appellants' argument calls for a statute without any maximum providing full payment by the Fund for any judgment recovered against an uninsured motorist.

The legislative intent appears to have been otherwise. As discussed, *infra*, the purpose of the Fund is to provide "some measure of relief" and not complete indemnification. *Dixon* v. *Gassert, supra; Robson* v. *Rodriquez, supra.* Prior to the existence of the Fund, the injured party had a legal right to collect a judgment against a judgment-proof debtor. With the enactment of the law, the remedial characteristics of the legal right were affected. See Elder, *The Unsatisfied Judgment Fund and the Irresponsible Mo-*

torist, supra, pp. 156-159. For one, the victim does in fact receive payment from the Fund within certain statutory limits, where, previously, payment was unavailable.

It is, however, the reasonableness of these very maximum limitations which are the subjects of appellants' charge of constitutional invalidity. The limitations are: in the case of personal injury or death a maximum of $10,000 for any one person, and of $20,000 for any one accident. N.J.S.A. 39:6-69(a) and (b). Before the amendments to the Fund Law in 1958 by P.L. 1958, c. 99, the original maximums were $5,000 and $10,000. P.L. 1952, c. 174. Parallel amendments were made in the Motor Vehicle Security-Responsibility laws to raise the original maximums from $5,000 and $10,000 to $10,000 and $20,000. See P.L. 1958, c. 95, §§1, 2, 3, 4, 6 [amended limits]; P.L. 1952, c. 173, §§3, 9, 15, 16, 24 [original limits]. Thus, regardless of whether a person, along with others, was injured by an insured or uninsured motorist, a minimum, uniform measure of relief was assured. It would certainly have been unfair if the minimal relief which a person could obtain was greater where the motorist was uninsured. Rather than permit such unequal treatment to occur, the Legislature employed the same minimum aggregate limits with regard to uninsureds and insureds. Thus, instead of minimizing equality among persons injured in a single accident, as appellants contend, the Legislature sought to achieve a maximum of equality.

It is submitted that the appellants have failed to demonstrate the unreasonableness of the legislative classification on equal protection grounds. Moreover, appellants' characterizing as an indefensible goal the suggestion of the Court below that the aggregate limitation operates to limit the exposure of the Fund or facilitate its solvency is clear-

ly defensible (Jurisdictional Statement, p. 12). The fact that the Director of the Division of Motor Vehicles has the authority to assess both uninsureds and insurers in terms of the probable amount to meet the needs of the Fund was not tantamount to a legislative delegation to raise statutory maximums. N.J.S.A. 39:6-63. Hopefully, it will assure solvency within the existing statutory limitations, although the most recent report of the Fund's manager for the year ending March 31, 1966 indicates a balance sheet insolvency if the valuation figure placed on all pending claims became due at the same time. Similarly, appellants, rejection of limiting the exposure of the Fund is not well founded. Although the likelihood of vehicular catastrophe may be rare, that does not mean such a contingency can be reasonably ignored when funding against all vehicular risks. Certainly, a Legislature would have been derelict in its responsibilities if it chose to overlook what might happen.

Appellants place heavy reliance on two decisions to support their position. "Directly in point", according to appellants, "is the decision of the Supreme Court of Iowa in *Collins* v. *State Board of Social Welfare,* 248 Iowa 369, 81 N. W. 2d 4 (1957)." There, the Court struck down an amendatory proviso limiting grants of aid to dependent children to a maximum of $175.00 per month regardless of the need of each child in the home. The Court concluded that the subclassification, *i.e.,* dependent children, based solely upon the number of children in the home, with no consideration as to need, was completely disconnected from the basic classification which had as its announced purpose to provide for the needy child. The amendment was considered discriminatory because it was contrary to the basic purpose of the Act. *Collins* v. *State Board of Social Welfare, supra,* p. 9. [Three justices dissented in the *Collins* case.]

Here, unlike *Collins*, the New Jersey Supreme Court has repeatedly emphasized that the primary purpose of the Fund Law was to provide "some measure of relief". *Dixon* v. *Gassert, supra; Robson* v. *Rodriguez, supra.* Thus, the aggregate limit imposed by the Legislature which is uniformly applicable to persons injured by insureds and uninsureds alike does no violence to the more limited goal of some minimum relief embraced by the Fund Law.

Appellants also seek comfort in this Court's decision in *Smith* v. *Cahoon*, 283 U. S. 553. There, one of the grounds for holding a Florida law invalid was that insofar as the statute was designed to safeguard the public with respect to the use of the highways certain private carriers transporting farm products, milk, butter or fish or oysters were relieved of the necessity of obtaining certificates of public convenience and posting security to protect the public. Others, who might carry for hire bread or sugar, or tea or coffee, or groceries in general, were required to comply. *Smith* v. *Cahoon, supra*, p. 567. The discrimination, which had no justification, was held to be wholly arbitrary.

No comparison exists with regard to the statutes in question here. Differentiating between members of the public singly injured or injured in mulfiple, as appellants would do, only serves to isolate part of a more comprehensive legislative scheme. The aggregate limit, as pointed out hereinbefore, applies to assure a minimum, uniform level of relief to all persons injured by both insured and uninsured motorists in New Jersey. No invidious discrimination inheres in this situation. See *Moan* v. *Coombs*, 47 N. J. 348, 221 A. 2d 10 (1966) where the New Jersey Supreme Court sustained the constitutionality of the Unsatisfied Claim and Judgment Fund Law against an equal protection attack in its rejection of a claim for benefits by a

Pennsylvania resident injured by an uninsured New Jersey resident in New Jersey when Pennsylvania did not afford New Jersey residents substantially similar recourse.

In any event, if the appellants are dissatisfied with the statutory maximums under the Fund Law, let them convince the New Jersey Legislature that upward revision is necessary. Their remedy for an increased measure of relief is not to be found in this Court; it should be pursued in the State Legislature.

CONCLUSION

The New Jersey Supreme Court has construed, as a matter of state substantive law, a provision of the Unsatisfied Claim and Judgment Fund Law, which disposes of appellants' claim for additional monies. The Supreme Court of New Jersey's decision was rendered independent of any consideration of federal law and was adequate in itself to support the judgment. If this Court were to entertain this appeal under these circumstances, it would in effect be catering to the desires of appellants for the rendition of an advisory opinion on the constitutionality of a law which could not otherwise affect the disposition of the case by the state court.

It is further submitted that the appellants have raised no substantial Federal question which would warrant the further attention of this Court and, therefore, it is respectfully urged that the instant appeal be dismissed.

Respectfully submitted,

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Intervenor-Appellee, State of New Jersey, Unsatisfied Claim and Judgment Fund.

ALAN B. HANDLER,
First Assistant Attorney General,
Of Counsel.

RICHARD NEWMAN,
Deputy Attorney General,
On the Brief.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 21 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966

No. 735

EPIFONIO GARCIA, *et als.*,

Appellants,

vs.

BALBINO MORALES,

Appellee.

On Appeal from the Supreme Court of the State of New Jersey

BRIEF IN OPPOSITION TO MOTION TO DISMISS

Meredith & Meredith,
Attorneys for the Appellants,
11 West State Street,
Trenton, New Jersey 08608.

TABLE OF CONTENTS

	PAGE
INTRODUCTORY STATEMENT	1
ARGUMENT:	
The judgment of the New Jersey court in upholding a statute challenged on the federal constitutional ground of denial of equal protection is a sufficient basis for review by this court	2
CONCLUSION	4

Citations

Collins v. State Board of Welfare, 248 Iowa 369, 81 N.W. 2d 4 (1957)	3
Dahnke-Walker Milling Co. v. Bondurat, 257 U.S. 282 66 L. Ed. 239, 42 S. Ct. 106 (1921)	3
Frost v. Railroad Commission of State of California, 271 U.S. 581, 70 L. Ed. 1101, 46 S. Ct. 605 (1926)	3
Garcia v. Morales, 47 N.J. 209, 220 A2d 198 (1966)	2, 3
Kutcher v. Newark Housing Authority, 20 N. J. 181, 119 A2d 1 (1955)	3
Lawrence v. State Tax Commission, 286 U.S. 276, 76 L. Ed. 1102, 52 S. Ct. 556	3
McCabe v. Atchison T. & S. F. R. Co., 235 U.S. 151, 59 L. Ed. 169, 35 S. Ct 69	3
Pearson v. Murray, 182 A. 590 (Ct. of Appeal of Maryland, 1936)	3

PAGE

State of Missouri ex rel. Gaines v. Canada, 305 U.S. 307, 83 L. Ed. 208, 59 S. Ct. 232 (1938) 2

Terral v. Burke Const. Co., 257 U.S. 529, 66 L. Ed. 352 42 S. Ct. 188 (1922) 3

Verona v. Civil Service Commission, 135 N.J.L. 539, 53 A2d 360 (Supreme Ct. 1947) 4

Statutes

Fourteenth Amendment 2

Iowa Statute, 239.1(4) 4

N.J.S.A. 39:6-69(a) 2

N.J.S.A. 39:6-69(b) 2

IN THE

Supreme Court of the United States

October Term, 1966

No. 735

EPIFONIO GARCIA, *et als.*,

Appellants,

VS.

BALBINO MORALES,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

BRIEF IN OPPOSITION TO MOTION TO DISMISS

Introductory Statement

This is a brief in opposition to a Motion to Dismiss submitted by the Appellees, Balbino Morales and the New Jersey Unsatisfied Claim and Judgment Fund. The motion has, as its basis, three points, of which only Point I disputes this Court's jurisdiction to hear the case. Therefore, only Point I will be answered, appellants relying upon their Jurisdictional Statement and Appellate Brief, should this Court desire to judge the issues presented, to answer the issues posed in Points II and III by the appellees.

ARGUMENT

The judgment of the New Jersey court in upholding a statute challenged on the federal constitutional ground of denial of equal protection is a sufficient basis for review by this court.

The New Jersey Supreme Court denied appellant's request that N.J.S.A. 39:6-69(b) be excised for the stated reason:

> "It is clear beyond reasonable doubt that the legislature intended section 69(a) to relate only to the situation where one person is injured in one accident and the provide a maximum recovery of $10,000 for such person. *Garcia* v. *Morales,* 47 N.J. 269, 220 A2d 198 (1966).

Assuming the validity of this assertion, it follows that the Statute is void on its face. It is conceded by the New Jersey Court that the statute operates to favor one or two victims of an unusual driver over those persons injured in accidents where three or more persons are seriously harmed. This not only frustrates the basic legislative intent but also deprives the multiple victims of their right to equal protection under the federal constitution.

The Legislature in N.J.S.A. 39:6-69(a) has created a basic measure of relief up to $10,000 for each person injured by a uninsured motorist. Then in section 69(b), it has arbitrarily limited this amount to $20,000 per accident which bears no relation to the purpose of the Act and its purpose of providing for a basic minimum amount to go to innocent victims of negligent drivers.

Concededly, the State need not extend any benefits to those injured by uninsured motorists. However, once created, the XIVth Amendment of the Constitution extends equal protection not only to rights but also privileges which the State provides. *State of Missouri ex rel. Gaines* v. *Canada,* 305 U.S. 307, 83 L. Ed. 208, 59 S. Ct. 232 (1938).

The New Jersey case of *Kutcher* v. *Newark Housing Authority,* 20 N.J. 181, 119 A2d 1 (1955), further notes:

> "The state may not condition a privilege which it may deny altogether on a surrender of constitutional right." Accord, *Frost* v. *Railroad Commission of State of California,* 271 U.S. 583, 70 L. Ed. 1101, 46 S. Ct. 605 (1926); *Terral* v. *Burke Const. Co.,* 257 U.S. 529, 66 L. Ed. 352, 42 S. Ct. 188 (1922).

Further, the obligation of

> "The state to afford equal protection is not diminished or altered by reason of the number of persons involved." *Pearson* v. *Murray,* 182 A. 590 (Ct. of Appeals, Maryland, 1936), citing *McCabe* v. *Atchison T. & S.F.R. Co.,* 235 U.S. 151, 59 L. Ed. 169, 35 S. Ct. 69.

While the State Court did not explicitly rule on the validity of the statute, where there is a failure of a State Court to rule on the federal constitution objection to the statute, it is equivalent to a finding of validity and an appeal will lie. *Lawrence* v. *State Tax Commission,* 286 U.S. 276, 76 L. Ed. 1102, 52 S. Ct. 556 (1932). Further, when the State Court limits the appellant's challenge to a particular set of facts, in this instance, ruling only that the judiciary cannot extend liability, and the result is to uphold the validity of the statute, appeal will lie. *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U.S. 282, 66 L. Ed. 239, 42 S. Ct. 106 (1921).

In response to the New Jersey Court's statement, that they will not increase the monetary liability of the Fund beyond the limit intended by the Legislature, *Garcia* v. *Morales, supra,* a quote from *Collins* v. *State Board of Welfare,* 248 Iowa 369, 81 N.W. 2d 4 (1957) is enlightening. In this case, the announced purpose of a child welfare act was to aid needy children. Each child adjudged needy was to receive $47 per month for support. An amendment to the statute limited this amount to $175 for each house-

hold. The Iowa Supreme Court found the amendment to be unconstitutional, stating:

> "The Amendment on its face appears to be and was, we think, intended as an economy measure. In effect, it is a subclassification of the original classification, i.e., dependent children, based solely upon the number of children in the home, with no consideration as to need, a circumstance, completely disconnected with the basic classification and the purpose and reason therefore. We think the amendment is clearly discriminating between dependent children as defined in Section 239.1(4) and is purely arbitrary and unreasonable in view of the announced purpose of the act".

It is then obvious that the Iowa Court's holding could increase the State's liability beyond what the legislature may have intended. Appellants submit that it was no reason to uphold the statute in Iowa and should not be the reason for upholding in New Jersey. Accord, *Verona* v. *Civil Service Commission,* 135 N.J.L. 539, 53 A. 2d 360 (Supreme Court 1947).

CONCLUSION

For the reasons argued above, it is respectfully submitted that the New Jersey Supreme Court decision to uphold the statute provides sufficient constitutional grounds for an appeal to lie.

Respectfully submitted,

EDWARD B. MEREDITH,
Attorney for Appellants.